IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1778 OF 1992

Karve Institute of Social
Service & Anr. ..Petitioners

versus

The Regional Provident Fund
Commissioner & Ors. ..Respondents

Mr. N. Shimpi h/f. Mr. P. K. Dhakephalkar for the Petitioners.

Mr. S. M. Shah for the Respondent Nos. 1 and 2.

Mr. S.K. Chinchalikar, AGP for the Respondent Nos. 3 and 4 - State.

CORAM : D. G. DESHPANDE, J.

DATE : 9TH OCTOBER, 2006

ORAL ORDER :

1. Heard.

2. Petitioner No. 1 is an Institution doing social welfare. The petitioners have challenged the order at Exhibit 'J' of the Regional Provident Fund Commissioner, by which damages to the extent of Rs.1,03,154/- were imposed upon the petitioners for

not depositing the amounts as required under The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "said Act"). Counsel for the petitioners challenged this order on the ground that the petitioner No.1 is a social welfare institution. It is running since 1963. The said Act was applicable to it in 1982. However, there was stay of the Supreme Court to certain Sections of the said Act. That stay came to be vacated in September, 1989, but even though there was stay, the petitioners were collecting the amount of the provident fund and liabilities under the said Act, they were depositing it in private bank. When the stay was vacated by the Supreme Court, they transferred all that accumulated amount along with interest accrued thereon to the Commissioner Provident Fund, and, therefore they are not liable to pay the damages. He contended that if there is no dispute that the amount collected by the petitioner No.1 as employer under the said Act has been retained by them or has not been collected or misappropriated, the amount of damages is imposed only for delay, for the aforesaid reason.

3. Counsel for the respondents contended under

Section 14B of the said Act, the Provident Fund Commissioner is empowered to recover damages by way of penalty, and, therefore, by exercising powers under Section 14B damages to the extent of Rs.1,03,154/- were properly imposed and no need to interfere with the said order.

4. It is true that the Provident Fund Commissioner is empowered to impose damages. However, conduct of the petitioners in depositing the amount in bank and then transferring it to the Provident Fund Commissioner along with interest clearly shows that the petitioners had no intention to commit any default or act contrary to the provisions of the said Act. It is also not disputed that from 1982-89 there was stay of the Supreme Court and this may be bonafide reason for the petitioners not to directly deposit that amount with the Provident Fund Commissioner. Considering these facts, and further also considering the fact that Provident Fund Commissioner is given discretion to impose damages and the discretion is given in this regard in the following words:

"The Provident Fund Commissioner may recover

from the employer by way of penalty such damages not exceeding the amount of arrears."

Therefore, the discretion is given to impose amount of damages which may extend upto the amount recoverable. Therefore, in the circumstances, looking to the background and facts of the case and considering the conduct of the petitioners, the petition is required to be partly allowed. In my opinion, damages to the extent of Rs.25,000/- would be proper in the circumstances.

5. In the result, the petition is partly allowed. Order of the Regional Provident Fund Commissioner which is at Exhibit ’J’ to the petition is modified. The amount of damages to be paid by the petitioners shall be Rs.25,000/- only. Petitioners to pay the amount of Rs.25,000/- within four weeks from today. Rule answered accordingly. Petition is disposed of.

(D.G. DESHPANDE, J.)